IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3578 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BUDHIYABHAI SOMABHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 3578 of 2001

MR NM KAPADIA for Petitioner No. 1

MR KT DAVE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 11/09/2001

ORAL JUDGEMENT

1. In exercise of powers conferred under Section 3 (2) of the Gujarat Prevention of Antisocial Activities Act, 1985 ('the Act' for short), the Commissioner of Police, Surat City, Surat, vide order dated February 14, 2001, Annexure A to the petition, detained the petitioner

-detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority considered the petitioner as a bootlegger within the meaning of section 2 (b) of the Act and as four cases under the Bombay Prohibition Act are registered against him which are pending for trial and statements of two independent witnesses are recorded, the detaining authority came to the conclusion that the activities of the detenu are prejudicial to the maintenance of public order and therefore powers under Section 9 (2) of the Act were exercised by the detaining authority by not disclosing the names of the independent witnesses and the order of detention came to be passed.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue a writ of habeas corpus or writ of mandamus or any other appropriate writ or order quashing and setting aside the impugned order of detention and prayed to set him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. Kapadia, learned advocate for the petitioner, has restricted his arguments to the fact that non-supply of vital documents, that is, report of chemical analyzer pari pasu has seriously affected the right of the petitioner of making an effective representation to the authority concerned and the rights guaranteed under Article 22 (5) of the Constitution is violated and on this sole ground the order of detention is bad in law and vitiates the order of detention. He also contended that privilege under section 9 (2) of the Act by not disclosing identity of the witnesses has been wrongly claimed and that also has seriously prejudiced the right of the petitioner of making an effective representation. He therefore urged to allow this petition by quashing and setting aside the order of detention and further prayed that the petitioner may be set at liberty forthwith.

5. Though reply affidavit is not filed, Mr. K.T. Dave, learned AGP has challenged the petition by making oral submissions. He however does not dispute the factual aspect of non-supply of report of chemical analyzer. He further contended that from the point of view of the fear expressed by the witnesses their names were not disclosed to the petitioner and therefore according to him the order of detention is not suffering

from any vices which requires to be confirmed by this Court by dismissing the petition.

6. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition, annexures thereto and the impugned order of detention by which the petitioner came to be detained by the detaining authority.

7. In M. Ahamedkutty v. Union of India and another, (1990) 2 SCC 1, the Supreme Court has considered the effect of non-supply of documents to the detenu. In the said case, documents like bail application and the bail order were not supplied by the detaining authority to the detenu and the Supreme Court held that the right to make effective representation as enshrined under Article 22 (5) of the Constitution is violated, continued detention of the detenu was held to be illegal.

8. This Court in Amrutbhai Ramabhai Vagri v. Commissioner of Police, Ahmedabad City, 1994 (2) GLH (U.J.) 5 held that non-supply of report of chemical analyzer to the detenu though demanded by him is also a vital factor to be considered since it infringed the right of the detenu to make effective representation under Article 22 (5) of the Constitution.

9. Applying the aforesaid principles enunciated by the Supreme Court and this Court to the facts of the present case it cannot be disputed that the detaining authority has not supplied the report of the chemical analyzer though demanded by the petitioner and this has violated the right of the petitioner to make effective representation to the authority concerned. On this sole ground, the order of detention based on registration of four cases under the Prohibition Act is vitiated.

10. Now so far as other grounds, that is statements of two independent witnesses recorded by the detaining authority are concerned, the privilege claimed by the authority cannot be termed as genuine. It is true that in the order impugned, the detaining authority has stated that the names of the witnesses were not disclosed as the witnesses expressed their fear at the hands of the petitioner. However, such fact is not supported by the reply affidavit which ought to have been filed by the detaining authority and in absence of reply affidavit the privilege claimed by the detaining authority cannot be termed as genuine. So on this ground also the order of detention is vitiated and the petition deserves to be allowed.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order of detention dated February 14, 2001 passed against the petitioner detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M. Kapadia, J.)

(karan)